

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs February 14, 2006

**STATE OF TENNESSEE v. ANTONIO D. WINTERS**

**Direct Appeal from the Criminal Court for Davidson County**  
**No. 2002-I-360 J. Randall Wyatt, Jr., Judge**

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**No. M2005-00711-CCA-R3-CD - Filed May 22, 2006**

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The probation of the defendant, Antonio D. Winters, was revoked based upon: 1) new law violations consisting of possession of Schedule II drugs for resale; 2) failure of drug tests for use of cocaine and marijuana; and 3) failure to complete Lifelines Therapeutic Community program. On appeal, the defendant contends: 1) that the trial court abused its discretion when it granted the state's motion to impose sentence because the motion was not a probation violation warrant; and 2) whether the trial court had jurisdiction to impose the original sentence. Upon review, we conclude that the trial court did not abuse its discretion because the motion to impose sentence did serve as the functional equivalent of a probation violation warrant and did provide actual notice to the defendant of the defendant's violations and of the state's intention to have his probation revoked. Further, the trial court did have jurisdiction to impose the original sentence. The probation revocation judgment from the trial court is affirmed.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed**

JOHN EVERETT WILLIAMS, J., delivered the opinion of the court, in which DAVID H. WELLES and THOMAS T. WOODALL, JJ., joined.

Mike J. Urquhart, Nashville, Tennessee, for the appellant, Antonio D. Winters.

Paul G. Summers, Attorney General and Reporter; David E. Coenen, Assistant Attorney General; Victor S. (Torry) Johnson, III, District Attorney General; and Harold Donnelly, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

Facts and Procedural History

The defendant pled guilty on April 5, 2002, to the offense of possession of over 0.5 grams of cocaine to sell or deliver, a Class B Felony. The defendant received a sentence of eight years as a Range I offender suspended to eight years on supervised probation. On July 18, 2003, the first probation violation warrant was filed regarding the defendant, alleging:

- 1) New law violations (theft of property and assault with bodily injury);
- 2) A violation of Rule 2 of his rules of probation (I will report all arrests, including traffic violations, immediately, regardless of the outcome, to my Probation/Parole officer);
- 3) A violation of Rule 4 of his rules of probation (I will work at a lawful occupation and support my dependents, if any, to the best of my ability);
- 4) A violation of Rule 9 of his rules of probation (I will agree to pay all required fees to the Supervision and Criminal Injuries Fund unless waived by appropriate authorities); and
- 5) A violation of Rule 10 of his rules of probation ( I will observe any special conditions imposed by the Court as listed below–failure to pay his court ordered fine).

Following a hearing on the probation violation, the trial court revoked the defendant's probation and ordered him to serve one year, day for day, at one hundred percent and to complete the assistance program, "Lifelines," with the condition that he could petition for early release upon completion of the program. From the record, we conclude the defendant did not complete the program but was released on September 4, 2004, after serving one year. On October 7, 2004, the defendant pled to a charge of possession of less than 0.5 grams of Schedule II, a Class C felony. The defendant received a sentence of five years as a Range I offender, suspended to community corrections, to run consecutive to the eight-year sentence of April 5, 2002.

On November 19, 2004, a violation of community corrections warrant was filed relating to the new guilty plea, alleging that the defendant violated Rule five of his community corrections program which states that the offender shall not possess or use alcohol or drugs unless prescribed by a licensed physician. The defendant submitted a urine sample on November 10, 2004, which tested positive for cocaine and marijuana. On January 7, 2005, after a hearing on the violation, the defendant's probation was revoked and it was ordered that he again be placed on community corrections and that he complete a drug dependency class. On January 28, 2005, another violation of community corrections warrant was filed, alleging that defendant again violated Rule five of his community corrections program after another positive test for cocaine. On February 11, 2005, the defendant's probation was again revoked and his sentence was placed into effect.

On February 18, 2005, while the defendant was in custody, the state filed a motion to impose sentence in the instant case based upon: 1) the defendant's failure to complete Lifelines and 2) new law violations which resulted in a guilty plea and a new sentence of probation which was subsequently revoked due to the defendant's non-compliance. On March 3, 2005, after a hearing on the motion to impose sentence, the trial court issued an order revoking the defendant's probation and placed his sentence into effect.

At the hearing, counsel for the defendant conceded to the court that the defendant had a number of new charges since the entry of his original plea on April 5, 2002. Counsel further conceded that the defendant was placed on probation for one of the new charges and that his

probation had subsequently been revoked on two occasions for violations of the community corrections program. There was no testimony given at the hearing on the motion to impose sentence.

### Analysis

On appeal, the defendant alleges that the trial court abused its discretion when it granted the state's motion to impose sentence. He contends that the motion to impose sentence denied him due process because a violation of probation should have been issued in place of the motion to impose sentence. The defendant further argues that the amended judgment entered by the trial court on September 4, 2003, modified his sentence from eight years probation to one year in confinement and served to terminate the balance of the sentence to be served on probation.

A trial court may revoke probation and order the imposition of the original sentence upon a finding by a preponderance of the evidence that the person has violated a condition of probation. T.C.A. §§ 40-35-310, -311. The decision to revoke probation rests within the sound discretion of the trial court. State v. Mitchell, 810 S.W.2d 733, 735 (Tenn. Crim. App. 1991). Revocation of probation and a community corrections sentence is subject to an abuse of discretion standard of review, rather than a de novo standard. State v. Harkins, 811 S.W.2d 79, 82 (Tenn. 1991). Discretion is abused only if the record contains no substantial evidence to support the conclusion of the trial court that a violation of probation or community correction sentence has occurred. Id.; State v. Gregory, 946 S.W.2d 829, 832 (Tenn. Crim. App. 1997). Proof of a violation need not be established beyond a reasonable doubt, and the evidence need only show that the trial judge exercised a conscientious and intelligent judgment, rather than acted arbitrarily. Gregory, 946 S.W.2d at 832; State v. Leach, 914 S.W.2d 104, 106 (Tenn. Crim. App. 1995).

Upon review, we conclude that the defendant was not denied due process because he was provided written notice of the claimed violations of his probation and he conceded to the court through counsel that he was arrested on new law violations, pled guilty to one new law violation resulting in a sentence of community corrections, and subsequently violated his community corrections twice in a four-month period after his sentence was placed into effect. We also conclude that the amended judgment entered by the trial court did not supercede the original sentence of eight years of supervised probation so that when the defendant completed his term of one year in confinement he remained on probation. The defendant executed a probation agreement on April 5, 2002, which expressly stated the conditions of his probation and clearly stated that he was on probation until April 5, 2010. The defendant was advised of these conditions and was aware of the rules and regulations of his agreement. The amended judgment order did not revoke the prior sentence; it merely ordered the defendant to serve one year in confinement before completing the balance of his sentence on probation. Further, the sentence of confinement for one year appears to be an effort of the court to help the defendant with his drug problem. The order clearly states that the defendant could have petitioned the court for release from confinement after completing the Lifelines program. The trial court was very lenient with the defendant, and it is clear from the record that the trial court afforded the defendant every opportunity to avoid confinement. However, by his actions, he did what he could to ensure that the court would have to order him into custody.

The defendant argues that, for the matter to come before the court under the provisions of Tennessee Code Annotated section 40-35-311, the trial court is required to issue a violation of probation warrant. The defendant's argument lacks merit. His interpretation of the procedure to revoke suspension of sentence or probation codified at Tennessee Code Annotated section 40-35-311 is improper. The statute gives the trial court the discretion to issue a warrant for the arrest of a defendant believed to be in violation of his probation. However, the law does not require the trial court to issue a warrant. The defendant misinterprets the language of the statute to reflect that the court must issue a violation warrant. The statute gives the court the authority to issue a warrant but does not require them to do so. T.C.A. § 40-35-311. In the instant case, the defendant was in custody due to a violation of his community corrections sentence. Therefore, it was not necessary that the court issue a warrant to bring the defendant before the court. The state's motion to impose sentence was a proper pleading and contained adequate notice to the defendant of the allegations against him, as well as provided adequate notice of the evidence to be used against him. At the hearing, the defendant's counsel conceded all the alleged violations contained in the motion to impose sentence. We conclude that the court did not deny the defendant due process when it allowed the motion to impose sentence.

When a defendant pleads guilty and is convicted of a crime while on probation, there are no disputed facts or contested issues that warrant due process protection. State v. Gause, No. W2002-01225-CCA-R3-CD, 2002 Tenn. Crim. App. LEXIS 1002, at \*12 (Tenn. Crim. App. At Jackson, Nov. 14, 2002). A defendant's convictions constitute an independent basis for revocation of probation. T.C.A. 40-35-311(a). Therefore, it is unnecessary to address the issues surrounding other alleged probation violations. The only question is whether the trial court abuses its discretion when it revokes a defendant's probation on the basis of his convictions. This court has previously determined that a crime committed during probation constitutes substantial evidence that a violation of probation has occurred. State v. Gabel, 914 S.W.2d 562, 564 (Tenn. Crim. App. 1995).

The defendant contends that no substantial evidence exists to support the conclusion of the trial court that a violation of probation has occurred. He argues further that, because the state ran the sentences consecutively, they cannot use the later guilty plea as the basis for revoking his probation. However, the revocation was not based solely on the subsequent guilty plea. It was based on the totality of circumstances surrounding the conduct of the defendant. The defendant violated the law again by possessing an amount of cocaine with the intent to sell. The court was lenient with him in again suspending his sentence to community corrections, a sentence which the defendant conceded he had violated two times within a three-month period. The court also considered an additional ground, that the defendant did not attend the Lifelines program as ordered on September 4, 2003. Further, the defendant repeatedly failed drug tests, also a violation of the probation agreement executed on April 5, 2002. We conclude that either violation, standing alone, would have been sufficient to revoke the defendant's probation; however, taken together, they provide compelling reason for revocation.

